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Amendment and Response

Serial No.: 10/758,626

Confirmation No.: 6109

Filed: January 15, 2004

For: RESEALABLE CONTAINERS HAVING INTERNAL ROLLER SURFACE

Remarks

The Advisory Action of May 15, 2007 has been received and reviewed. With claims 1, 3, 26, 30, and 38 having been amended, claims 23-25, 28, 35, and 39 having been canceled, and claim 40 having been added, the pending claims are claims 1-7, 10, 12-22, 26-27, 29, 30, 32, 33, 36-38, and 40 (of which claim 17 is withdrawn from consideration). Reconsideration and withdrawal of the rejections are respectfully requested for at least the reasons set forth below.

Examiner Interview

Applicants' Representative, Matthew Adams (Reg. No. 43,459), appreciates the time of Examiner Castellano in discussing this matter on June 7, 2007. The amendments made herein are believed to conform to the substance of that interview and, as a result, entry and consideration are respectfully requested.

New Claim

Claim 40 has been added. Support for this amendment may be found in the application as originally filed (*see, e.g., Specification*, page 12, lines 1-2, page 17, lines 25-26, and Figure 18).

Claim Amendments

Please cancel claims 23-25, 28, 35, and 39 without prejudice.

Claim 1 has been amended to incorporate other recitations, *e.g.*, recitations originally found in claim 3 and elsewhere in the specification (*see, e.g., Specification*, page 14, lines 15-17; page 15, lines 10-13; original claim 3; and Figures 11, 12, 13, and 18).

Claim 3 has been amended to be consistent with amended claim 1.

Claim 26 has been amended as illustrated herein. Support for this amendment may also be found in the specification as originally filed (*see, e.g., Specification*, page 14, lines 15-17; original claim 28; and Figures 11-13, 17, and 18).

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Claim 30 has also been amended as shown herein. Support for this amendment may be found in the application as originally filed (*see, e.g., Specification* page 14, lines 15-17; original claims 12 and 26; and Figure 11, 12, 17, and 18).

Claim 38 has also been amended to incorporate other recitations as shown above. Support for this amendment may be found in the application as originally filed (*see, e.g., Specification*, page 16, lines 8-11; page 15, lines 10-13; and Figures 11, 12, 13, and 18).

Entry and consideration of these amendments are respectfully requested.

The 35 U.S.C. § 102 Rejection

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. M.P.E.P. § 2131 (citation omitted).

Claims 30, 35, 38, and 39 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jaeger (U.S. Pat. App. Pub. No. 2001/0050284). Claims 35 and 39 are canceled herein, rendering their respective rejections moot. To the extent that this rejection is still applied in view of the amendments herein, Applicants provide the following remarks.

Jaeger recites a bin, i.e., waste barrel, for collecting biological materials. As shown in the unnumbered figure, the bin may include a bottom grating 12 near the bottom of the bin. *See Jaeger*, paragraph 27.

Applicants submit that no teaching is identified within the disclosure of Jaeger of a container including each and every recitation found in amended independent claims 30 and 38 as required for anticipation.

For example, amended claim 30 recites a container including a one-piece container body that defines a partially enclosed reservoir for receiving and storing a designated volume of liquid. The container also includes a first roller surface pivotally coupled to the container body. The first roller surface is, when in a first position, located within the reservoir at a level above the designated volume of liquid and below the open top, and is further positioned about 70 degrees to about 110 degrees from vertical.

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Amended claim 38 now recites a container including a one-piece container body having a floor and at least one pair of opposing sidewalls. The floor and the at least one pair of opposing sidewalls define a reservoir operable to hold a designated volume of liquid. A first roller surface is pivotally coupled to the at least one pair of opposing sidewalls, wherein, when the first roller surface is in a first position in which the first roller surface faces upwardly and away from the floor, the first roller surface is located within the reservoir above the designated volume of liquid; it spans substantially between the at least one pair of opposing sidewalls; and it defines an access zone for accessing liquid in the container by a roller-type applicator.

Applicants submit that, among other deficiencies, Jaeger does not describe a one-piece container body and a first roller surface pivotally coupled to the container body as recited in claim 30 (or pivotally coupled to the at least one pair of opposing sidewalls of the container body as recited in claim 38). Still further, Jaeger does not describe a first roller surface that, when in a first position, is positioned about 70 degrees to about 110 degrees from vertical as recited in claim 30. Moreover, for example, Jaeger does not describe a first roller surface that, when in a first position in which the first roller surface faces upwardly and away from the floor, defines an access zone for accessing liquid in the container by a roller-type applicator as recited in claim 38.

For at least the above reasons, Applicants submit that claims 30 and 38 are not anticipated by Jaeger. Reconsideration and withdrawal of this rejection are requested.

The 35 U.S.C. § 103 Rejections

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.

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Claims 1-3, 6, 7, 10, 12-15, 19, 20, 30, 32, and 35-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Drum (U.S. Pat. No. 2,659,917) in view of Jaeger.

Claims 4, 5, 16, 18, and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Drum in view of Jaeger and further in view of Stern et al. (U.S. Pat. No. 6,102,235).

Claims 21 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Drum in view of Jaeger and further in view of Carling et al. (U.S. Pat. No. 5,992,106).

Claims 26-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Giarrante (U.S. Pat. No. 5,893,489) in view of Stern et al.

To the extent that any of these rejections are still asserted in view of the amendments and remarks made herein, Applicants provide the following comments.

Claims 1-3, 6, 7, 10, 12-15, 19, 20, 30, 32, and 35-39 (Drum in view of Jaeger)

Applicants submit that Drum in view of Jaeger does not teach, or even suggest, all the recitations of claims 1-3, 6, 7, 10, 12-15, 19, 20, 30, 32, and 36-38 as required to establish *prima facie* obviousness (claims 35 and 39 have been canceled herein).

For example, amended claim 1 now recites a container including: a one-piece container body; a lid to cover an open top of the container body and to form a relatively tight seal therewith; and a first roller surface. The body includes a sloped floor and at least one pair of opposing sidewalls, the sloped floor and the at least one pair of opposing sidewalls defining a reservoir operable to hold a designated volume of liquid. The first roller surface is pivotally coupled to the at least one pair of opposing sidewalls, and is pivotable between a first position and a second position, wherein, when the first roller surface is in the first position, a substantial portion of the first roller surface is located within the reservoir above the designated volume of liquid and substantially between the at least one pair of opposing sidewalls (claims 30 and 38 are described elsewhere above with respect to the 35 U.S.C. § 102 rejection).

Applicants submit that, among other deficiencies, the tray of Drum does not include a first roller surface pivotally coupled to at least one pair of opposing sidewalls as recited in claims 1 and 38 (or to the container body as recited in claim 30), or a reservoir operable to hold a designated volume of liquid as recited in claims 1 and 38 (or for receiving and storing a

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designated volume of liquid as recited in claim 30). Furthermore, Drum does not include a lid to cover an open top of the container body and to form a relatively tight seal therewith as recited in claim 1.

Nothing is identified within the disclosure of Jaeger that remedies these shortcomings. For instance, there is no teaching or suggestion of a container operable to hold (or receive and store) a designated volume of liquid as recited in claims 1 and 38 (and 30), nor is there a teaching or suggestion of a one-piece container body including a first roller surface pivotally coupled to at least one pair of opposing sidewalls (as recited in claims 1 and 38) or to the container body (as recited in claim 30).

It is further noted that Drum and Jaeger, neither alone or in combination, teach or suggest a lid to form a relatively tight seal with a one-piece container body as recited in claim 1. For example, the hook portions 14 of Drum would make sealing of a lid with the Drum tray difficult. Moreover, Jaeger's need to aerate and vent the barrel (via openings 7) actually teaches away from tight sealing of the barrel.

It is further submitted that Drum in view of Jaeger also fails to teach a roller surface that is positioned as recited in claim 30 (e.g., about 70 degrees to about 110 degrees from vertical) or provides the access zone recited in claim 38.

Applicants further maintain that an identified motivation to combine the teachings of Drum with those of Jaeger is lacking and, even if such a motivation or suggestion were to exist, the combination is beyond any predictable use of the respective elements of these two documents according to their established functions. Remarks concerning any alleged motivation to combine Drum with Jaeger were presented in Applicants' response of May 2, 2007, and those comments are incorporated herein by reference (along with the remaining portions of that communication).

For at least these reasons, Applicants submit that independent claims 1, 30, and 38 are nonobvious over Drum in view of Jaeger. Claims 2-3, 6, 7, 10, 12-15, 19, 20, 32, and 36-37 are also submitted to be nonobvious over Drum in view of Jaeger not only because of their dependence, but also due to the particular subject matter recited therein. Reconsideration and withdrawal of this rejection are, therefore, requested.

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- Claims 4, 5, 16, 18, and 33 (Drum in view of Jaeger and further in view of Stern et al.)

As stated above, Drum in view of Jaeger fails to establish a *prima facie* case of obviousness with respect to claims 1 (from which claims 4, 5, 16, and 18 depend) and 30 (from which claim 33 depends). The disclosure of Stern et al. does not remedy these deficiencies. Rather, Stern et al. is relied upon merely to teach a lid with an access opening. Also, Applicants remain unclear as to what motivation may exist to combine the teachings of Stern et al. with those of Drum and Jaeger. Further, Applicants submit that even if such a motivation or suggestion were to exist, the combination is beyond any predictable use of the respective elements of these three documents according to their established functions.

For at least these reasons, Applicants submit that claims 4, 5, 16, 18, and 33 are nonobvious over Drum in view of Jaeger and further in view of Stern et al. Reconsideration and withdrawal of this rejection are requested.

- Claims 21 and 22 (Drum in view of Jaeger and further in view of Carling et al.)

As stated above, it is submitted that Drum in view of Jaeger fails to establish a *prima facie* case of obviousness with respect to claim 1 (from which claims 21 and 22 depend). The disclosure of Carling et al. does not remedy this deficiency. Rather, Carling et al. is relied upon to teach an "X-shaped support structure." Moreover, Applicants again are unclear as to what motivation may exist to combine the teachings of Carling et al. with those of Drum and Jaeger. Further, Applicants submit that even if such a motivation or suggestion were to exist, the combination is beyond any predictable use of the respective elements of these three documents according to their established functions.

For at least these reasons, Applicants respectfully submit that claims 21 and 22 are nonobvious over Drum in view of Jaeger and further in view of Carling et al. Reconsideration and withdrawal of this rejection are requested.

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- Claims 26-29 (Giarrante in view of Stern et al.)

Applicants submit that Giarrante in view of Stern et al. does not teach, or even suggest, all the recitations of claims 26, 27, and 29 as required to establish *prima facie* obviousness (claim 28 is canceled herein).

For example, amended claim 26 now recites an article including a designated volume of liquid and a container. The container includes a container body for receiving and storing the designated volume of liquid, a removable and resealable lid operable to form a relatively tight seal with the container body, and a first roller surface. The first roller surface is pivotally coupled to the container body and positioned between two or more sidewalls of the plurality of sidewalls, wherein the first roller surface is, when in a first position, located above the designated volume of liquid and below an uppermost edge of the container body.

Applicants submit that, among other deficiencies, Giarrante does not include a first roller surface pivotally coupled to the container body and positioned between two or more sidewalls of the plurality of sidewalls as recited in claim 26. Stern et al. does not remedy this deficiency.

Applicants further maintain the assertion that no motivation or suggestion to modify Giarrante in view of Stern et al. to meet the limitations of the rejected claims is identified. In fact, it is submitted that the two documents teach away from combination. For instance, Stern et al. indicates that one objective of its design is to provide a lid that "has a planar top surface allowing it to be stacked with other paint-filled containers without the possibility of damage to the lid." *Stern et al.*, column 2, lines 64-67. Giarrante, on the other hand, has a lid that would appear to generally interfere with such stacking. *See Giarrante*, Figure 1. For these and other reasons, it is unclear why one of skill in the art would be motivated to combine the teachings of these two documents. Further, Applicants submit that even if such a motivation or suggestion were to exist, the combination is beyond any predictable use of the respective elements of these two documents according to their established functions. If this rejection is maintained, it is requested that any alleged motivation to combine these documents be addressed in the next official communication.

Applicants respectfully submit that claim 26 is nonobvious over Giarrante in view of Stern et al. for at least the reasons set forth above. Claims 27 and 29 are also submitted to be

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allowable over the identified art not only because of their dependence, but also because of the particular subject matter recited therein. Reconsideration and withdrawal of this rejection are, therefore, requested.

Summary

It is submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 20th day of June, 2007, at 1:47 p.m. (Central Time).

By: Dani MorozName: Dani Moroz